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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,694	07/21/2003	Thomas K. Allen	34169	5340

7590

01/27/2005

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,694

Applicant(s)

ALLEN ET AL.

Examiner

Cephia D. Toomer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the amendment filed October 14, 2004 in which claims 1-5 and 15-23 were canceled.

1. The indicated allowability of claims 6-14 is withdrawn in view of the newly discovered reference(s) to McLaughlin and Kessell. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-9 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by McLaughlin (US 5,948,323).

McLaughlin teaches colloidal-sized particles of solid chemicals that act as smoke suppressants and flame retardants (see abstract). The chemicals are milled to reduce their size and dispersed in a fluid vehicle such as water or an organic liquid (see abstract and claims 13-14). The solid chemicals include antimony trioxide and a mixed metal oxide of zinc and magnesium (see col. 2, lines 8-29). The solid chemical and fluid are prepared as a slurry and processed in an agitated media mill (see col. 2, lines 51-55; col. 3, lines 47-58). It is also preferred that the slurry further comprise a dispersion agent (see col. 2, lines 64-65). The final slurry comprises 5-60 wt % of the comminuted

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solid chemicals, 40-95 wt % fluid vehicle and 2-15 wt % dispersion agent (see col. 5, lines 38-42).

In Example 3, McLaughlin adds additional water to the solid chemical, water and dispersion mixture. Since McLaughlin teaches the same method, the dispersion of his invention would inherently remain suspended for at least one month.

Accordingly, McLaughlin teaching all the limitations of the claims anticipates the claims.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 6, 8, 10 and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Kessell (US 6,683,130).

Kessell teaches a dispersion comprising at least 30% by wt of a metal oxide (Ti, Zn or Fe)(see abstract; col. 2, lines 5-8), 10-60 5 by wt of an oil phase, 40-90 5 by wt. of an aqueous phase and 5-10 % by wt. of an emulsifier (see col. 5, lines 23-34). The metal oxides may be coated with saturated or unsaturated fatty acids (see col. 2, lines 61-67). These compounds are also known surfactants.

The method of preparing the dispersion of the metal oxides comprises milling the metal oxide in a siloxane fluid dispersing medium and in the presence of a dispersing agent. The process is continued until the primary particles of the metal oxides are pulverized to an average particle size less than 200 nm (see col. 4, lines 24-36).

Accordingly, Kessell teaching all the limitations of the claims anticipates the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kessell (US 6,683,130).

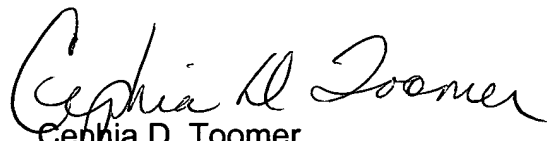
Kessell has been discussed above. Kessell fails to teach that oleic acid is the fatty acid. However, it would have been obvious to one of ordinary skill in the art to have selected oleic acid as the fatty acid because Kessell teaches using any C₁₀-C₂₀ fatty acid (see col. 2, lines 61-67).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cephia D. Toomer
Primary Examiner
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